

SECOND REGULAR SESSION

HOUSE BILL NO. 1454

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE JOHNSON (90).

Read 1st time January 14, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

2949L.011

AN ACT

To repeal section 454.507, RSMo, and to enact in lieu thereof one new section relating to child support liens on bank accounts.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 454.507, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 454.507, to read as follows:

454.507. 1. In addition to the authority of the division to request information pursuant to section 454.440, the division may request information from financial institutions pursuant to this section.

2. As used in this section:

(1) "Account" includes a demand deposit, checking or negotiable withdrawal order account, savings account, time deposit account or money market mutual fund account;

(2) "Encumbered assets", the noncustodial parent's interest in an account which is encumbered by a lien arising by operation of law or otherwise;

(3) "Financial institution" includes:

(a) A depository institution as defined in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. section 1813(c));

(b) An institution affiliated party as defined in section 3(u) of the Federal Deposit Insurance Act (12 U.S.C. section 1813(u));

(c) Any federal credit union or state credit union, as defined in section 101 of the Federal Credit Union Act (12 U.S.C. section 1752), including an institution affiliated party of such a credit union as defined in section 206(r) of the Federal Credit Union Act (12 U.S.C. section

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 1786(r)); or

18 (d) Any benefit association, insurance company, safe deposit company, money market
19 fund or similar entity authorized to do business in the state.

20 3. The division shall enter into agreements with financial institutions to develop and
21 operate a data match system which uses automated exchanges to the maximum extent feasible.
22 Such agreements shall require the financial institution, to provide to the division, for each
23 calendar quarter, the name, record address, Social Security number or other taxpayer
24 identification number, and other identifying information of each noncustodial parent who
25 maintains an account at such institution and who owes past due support, as identified by the
26 division by name and Social Security number or other taxpayer identification number. The
27 financial institution shall only provide such information stated in this subsection that is readily
28 available through existing data systems, and as such data systems are enhanced, solely at the
29 financial institution's discretion and for its business purposes, the financial institution shall
30 provide any original and additional information which becomes readily available for any new
31 data match request.

32 4. The division shall pay a reasonable fee to the financial institution for conducting the
33 data match pursuant to this section, but such amount shall not exceed the costs incurred by the
34 financial institution.

35 5. The division [of] **or** a IV-D agency may issue liens against any account in a financial
36 institution and may release such liens.

37 6. **(1)** If a notice of lien is received from the division or a IV-D agency, the financial
38 institutions shall immediately encumber the assets held by such institution on behalf of any
39 noncustodial parent who is subject to such lien. However, if the account is in the name of a
40 noncustodial parent and such parent's spouse **or parent**, the financial institution at its discretion
41 may not encumber the assets and when it elects not to encumber such assets, shall so notify the
42 division or IV-D agency. The amount of assets to be encumbered shall be stated in the notice
43 and shall not exceed the amount of unpaid support due at the time of issuance. [The financial
44 institution shall, within five business days of receipt of such notice, mail a copy of the notice of
45 lien to the noncustodial parent and any other person named on the account at the address shown
46 in the records of the financial institution.] **The financial institution shall, within five business**
47 **days of receipt of a notice of lien, notify the division or IV-D agency of the financial**
48 **institution's response to the notice of lien.**

49 **(2) Within five business days of notification by the financial institution that assets**
50 **have been encumbered, the division or IV-D agency shall notify by mail the noncustodial**
51 **parent of the issuance of the lien and the reasons for such issuance. The notice shall advise**
52 **the noncustodial parent of the procedures to contest such lien pursuant to section 454.475**

53 **by requesting a hearing within thirty days from the date the notice was mailed by the**
54 **division to the noncustodial parent.**

55 7. (1) Except as provided in subsection 6 of this section, the interest of the noncustodial
56 parent shall be presumed equal to all other joint owners, unless at least one of the joint owners
57 provides the division or IV-D agency with a true copy of a written agreement entered prior to the
58 date of issuance of notice of lien, or other clear and convincing evidence regarding the various
59 ownership interests of the joint owners within twenty days of the financial institution's mailing
60 of the notice of lien. The financial institution shall only encumber the amount presumed to
61 belong to the noncustodial parent. The division or IV-D agency may proceed to issue an order
62 for the amount in the account presumed to belong to the noncustodial parent if no prior written
63 agreement or other evidence is provided.

64 (2) If a prior written agreement or other clear and convincing evidence is furnished to
65 the division, and based on such agreement or evidence the division or IV-D agency determines
66 that the interest of the noncustodial parent is less than the presumed amount, the division or IV-D
67 agency shall amend the lien to reflect the amount in the account belonging to the noncustodial
68 parent or shall release the lien if the noncustodial parent has no interest in the account. In no
69 event shall the division or IV-D agency obtain more than the presumed amount of the account
70 without a judicial determination that a greater amount of the account belongs to the noncustodial
71 parent. The division or IV-D agency may by levy and execution on a judgment in a court of
72 competent jurisdiction seek to obtain an amount greater than the amount presumed to belong to
73 the noncustodial parent upon proof that the noncustodial parent's interest is greater than the
74 amount presumed pursuant to this subsection.

75 (3) For purposes of this subsection, accounts are not joint accounts when the
76 noncustodial parent has no legal right to the funds, but is either a contingent owner or agent.
77 Such nonjoint accounts shall include, but are not limited to, a pay-on-death account or any other
78 account in which the noncustodial parent owner may act as agent by a power of attorney or
79 otherwise. Furthermore, when any account naming the noncustodial parent has not been
80 disclosed to the noncustodial parent which is evidenced by a signature card or other deposit
81 agreement not containing the signature of such noncustodial parent, then for the purposes of this
82 subsection, such account shall not be treated as a joint account.

83 (4) Notwithstanding any other provision of this section, a financial institution shall not
84 encumber any account of less than one hundred dollars.

85 8. Upon service of an order to surrender issued pursuant to this section, any financial
86 institution in possession of a jointly owned account may interplead such property as otherwise
87 provided by law.

88 9. Any other joint owner may petition a court of competent jurisdiction for a

89 determination that the interests of the joint owners are disproportionate. The party filing the
90 petition shall have the burden of proof on such a claim. If subject to the jurisdiction of the court,
91 all persons owning affected accounts with a noncustodial parent shall be made parties to any
92 proceeding to determine the respective interests of the joint owners. The court shall enter an
93 appropriate order determining the various interests of each of the joint owners and authorizing
94 payment against the obligor's share for satisfaction of the child support or maintenance
95 obligation.

96 10. The court may assess costs and reasonable attorney's fees against the noncustodial
97 parent if the court determines that the noncustodial parent has an interest in the affected joint
98 account.

99 11. The division may order the financial institution to surrender all or part of the
100 encumbered assets. The order shall not issue until sixty days after the notice of lien is sent to the
101 financial institution. The financial institution shall, within seven days of receipt of the order, pay
102 the encumbered amount as directed in the order to surrender. **If the noncustodial parent**
103 **contests a lien pursuant to subdivision (2) of subsection 6 of this section and a hearing is**
104 **pending, the bank shall retain the surrendered funds in escrow pending the hearing**
105 **determination.**

106 12. A financial institution shall not be liable pursuant to any state or federal law,
107 including 42 U.S.C. section 669A, to any person for:

- 108 (1) Any disclosure of information to the division pursuant to this section;
109 (2) Encumbering or surrendering any assets held by the financial institution in response
110 to a lien or order pursuant to this section and notwithstanding any other provisions in this section
111 to the contrary, encumbering or surrendering assets from any account in the financial institution
112 connected in any way to the noncustodial parent; or
113 (3) Any other action taken in good faith to comply with the requirements of this section.

114 13. A financial institution that fails without due cause to comply with a notice of lien or
115 order to surrender issued pursuant to this section shall be liable for the amount of the
116 encumbered assets and the division may bring an action against the financial institution in circuit
117 court for such amount. For purposes of this subsection, "due cause" shall include, but not be
118 limited to, when a financial institution demonstrates to a court of competent jurisdiction that the
119 institution established in good faith a routine to comply with the requirements of this section and
120 that one or more transactions to enforce the lien or order to surrender were not completed due
121 to an accidental error, a misplaced computer entry, or other accidental human or mechanical
122 problems.